IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

Bail Appl..No. 4834 of 2007()

CRIME NO.538/06 OF ARANMULA POLICE STATION

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PETITIONER/IMPLICATING TO BE AN ACCUSED

MANESH KUAR, AGED 29 YEARS,
S/O. ANANDAN, KUTTIYIL HOUSE,
EDAPPARIYARAM, P.O., ELANTHOOR.

BY ADV. SRI.V.SETHUNATH

RESPONDENTS: COMPLAINANT AND STATE

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1. S.I. OF POLICE, ARANMULA POLICE STATION,

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 16/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 4834 OF 2007

Dated this the 16th day of August, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under Sec.379 of the IPC. The crux of the allegations against the petitioner is that he stealthily removed a bundle of newspapers which were kept for distribution in the locality. At the time of removal, the role played by the petitioner was not known. The short allegation was that the newspapers meant for distribution kept by the road side by a person were stealthily removed in a vehicle. The number of that vehicle was noted. This alleged incident took place on 15/12/06. Investigation continued. The owner of the vehicle was traced. It ultimately turned out that from the present owner of the vehicle the petitioner had taken the vehicle on the previous night. The prosecution has a further case that an offence under the Copy Rights Act was allegedly committed by

the petitioner and the petitioner apprehended that a news item about that will appear in the newspaper on that particular day. The Investigator is suspecting the petitioner and want him to arrest. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. According to him, the allegations are totally false. The learned counsel, in these circumstances, prays that directions under Sec.438 of the Cr.P.C. may be issued in favour of the petitioner. The learned counsel for the petitioner attempts to build up an argument that the allegations, even if accepted in toto, will not amount to an offence of theft.

3. This application is opposed by the learned Public Prosecutor. The learned Public Prosecutor submits that it is true that the offender could not be immediately traced after the registration of the crime. After laborious investigation, all the pointers are now directed at the petitioner. There are no circumstances justifying the invocation of the discretion under Sec.438 of the Cr.P.C. The contention that no offence of theft will be made out is totally sustainable. Anticipatory bail may not, in these circumstances, be granted to the petitioner, prays the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. At long last, the long arms of law appear to be catching up. The suspicion regarding the movement of a vehicle at the time of theft is clearly revealed. Through the registered owner and subsequent transferees, the police have come to know that the said vehicle was in the possession of the petitioner on that night. There are also reasons to suspect that the petitioner has an interest in ensuring that certain news item which was expected to be available in the newspapers did not reach the readers on that morning. I find no merit whatsoever in the contention that the removal of such newspapers kept by the road side will not amount to an offence under Sec.379 of the IPC. I do not find any features in this case which would justify the invocation of the discretion under Sec.438 of the Cr.P.C. This is a fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of

the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge